

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK  
CLARENCE DELANEY, JR.,

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Plaintiff,

9:08-CV-0886

v.

L. STEARNS, Deputy Supt. of Programs; DR. CONNELLY;  
DR. FERRARI; T. HARRIGAN, Nurse Administrator,

Defendants.

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APPEARANCES:

CLARENCE DELANEY, JR.  
Plaintiff, *pro se*

GARY L. SHARPE, U.S. DISTRICT JUDGE

### ORDER

*Pro se* plaintiff Clarence Delaney, Jr. commenced this action on August 18, 2008. Together with his complaint, Delaney submitted an application for leave to proceed with this action *in forma pauperis* and a request for appointment of counsel. Dkt. Nos. 1, 2, 4.

Presently before the Court is a letter from Delaney requesting that this action be dismissed. Dkt. No. 5.

Rule 41(a)(1) of the Federal Rules of Civil Procedure provides in relevant part as follows:

[A]n action may be dismissed by the plaintiff without order of court (i) by filing a notice of dismissal at any time before service by the adverse party of an answer or of a motion for summary judgment, which ever first occurs,....

As of the date hereof, defendants have not been served with the summons and complaint. Accordingly, Delaney is entitled to dismiss this action.

WHEREFORE, it is hereby

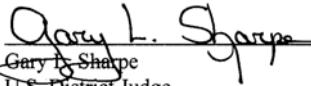
ORDERED, that this action is dismissed without prejudice pursuant to Delaney's

request (Dkt. No. 5), and it is further

ORDERED, that the Clerk serve a copy of this Order on Delaney by regular mail.

IT IS SO ORDERED.

Dated: September 8, 2008

  
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Gary L. Sharpe  
U.S. District Judge